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| 10/529,477 | 03/28/2005 | Hiromichi Minakawa | 26726US0PCT | 8279 |
| 22850 | 7590 | 04/08/2009 | | |
| OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314 | | | | |
| EXAMINER | | | | |
| LEFT, STEVEN N | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 1794 | | | | |
| NOTIFICATION DATE | | DELIVERY MODE | | |
| 04/08/2009 | | ELECTRONIC | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary**Application No.**

10/529,477

Applicant(s)

MINAKAWA, HIROMICHI

Examiner

STEVEN LEFF

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/17/09 has been entered.

Declaration

The Declaration filed under 37 CFR 1.132, filed 2/17/09 is insufficient to overcome the rejection of claim 1 in light of <http://www.marcmillon.co.uk/writing.html;2001>.

It is noted that the declaration include(s) statements which amount to an affirmation that the claimed subject matter functions as it was intended to function. This is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof. See MPEP § 716.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prasad et al. (WO 00/65937) in view of <http://www.marcmillon.co.uk/writing.html:2001> as evidenced by <http://www.recipegoldmine.com/meatbeefQ/sesame-soy-flank-steak.html>.

With respect to claim 1 Prasad et al. teach a method for microwave cooking (page 4 line 16). More specifically, Prasad et al. teach preparing a seasoning (page 4 line 8) comprising at least one organic acid specifically, citric acid (page 16 line 18), a starch (page 17 line 27), a thermosetting protein (page 18 line 1) and an edible fat and oil (page 18 line 19, page 9 lines 14-22), applying the seasoning to a raw meat or raw fish (page 14 lines 16-18), and subjecting the seasoned product to microwave heating (page 4 line 16). Prasad et al. continue by teaching that the seasoning further comprises the reaction of amino acids and reduced sugars during heating and prior to application to the meat product, where Prasad et al. positively teaches heating prior to application to the meat product on page 8 paragraph 2 for producing a component which enhances browning (pg. 8 par. 2).

However Prasad et al. does not specifically teach the addition of melanoidin to the composition.

<http://www.marcmillon.co.uk/writing.html> teaches a marinade for raw meat. More specifically <http://www.marcmillon.co.uk/writing.html> teaches applying a seasoning to the raw meat and subjecting the raw meat to heating (pg. 4 steps 1 and 2). It is initially noted that <http://www.marcmillon.co.uk/writing.html> specifically teaches that the seasoning comprises Kikkoman soy sauce, and therefore <http://www.marcmillon.co.uk/writing.html> positively teaches the seasoning comprising melanoidin since applicant discloses on page 14 that melanoidin containing foods include fermented soy sauce where Kikkoman soy sauce is known to be a fermented soy sauce as is evidenced by <http://www.recipegoldmine.com/meatbeefQ/sesame-soy-flank-steak.html> (pg. 2 lines 1-3).

Thus since Prasad et al. teach a seasoning which is comprises a component formed by the reaction of amino acids and reduced sugars during heating in order to further promote browning at an increased rate (pg. 8 par. 2-3, par. 9 par. 1), in addition to teaching that the amino acid could be wheat gluten (pg. 7 third to last line), and since

<http://www.marcmillon.co.uk/writing.html> positively teaches the seasoning comprising melanoidin, one of ordinary skill in the art would have been motivated to combine the teachings of Prasad et al. and <http://www.marcmillon.co.uk/writing.html> in order to promote browning of the meat as is desired by Prasad et al. (pg. 8 par. 2-3, par. 9 par. 1) and further in order to provide a seasoning which greatly enhances any meat flavors which are already present in the food since soy sauce is known as a desired flavoring for meats including fish as is further evident by <http://www.recipegoldmine.com/meatbeefQ/sesame-soy-flank-steak.html>.

Therefore it would have been obvious to one of ordinary skill in the art to teach the presence of melanoidin in the composition since all the claimed elements were known in the prior art and one skilled in the art could have taught the composition including melanoidin with no change in its respective functions, thus yielding predictable results to one of ordinary skill in the art at the time of the invention where combining the two methods, each of which is taught by the prior art to be useful for the same purpose of producing a meat seasoning, flows logically from their having been individually taught in the prior art (see MPEP 2144.06) for promoting browning and enhancing meat flavor.

Response to Arguments

Applicant's arguments have been fully considered however, upon further consideration, a new ground(s) of rejection is made in view of <http://www.marcmillon.co.uk/writing.html>.

In response to applicant's declaration and arguments against the references individually it is noted that although Prasad et al. does not specifically teach melanoidin as a component in the composition, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references where <http://www.marcmillon.co.uk/writing.html> positively teaches melanoidin. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/

Primary Examiner, Art Unit 1794

/Steven Left/

Examiner, Art Unit 1794